

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/520,311

Examiner

Kallambella Vijayakumar

Applicant(s)

VAN BRUGGEN ET AL.

Art Unit

1793

—The MAILING DATE of this communication appears on the cover sheet with the correspondence address —

THE REPLY FILED 11 February 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) The period for reply expires ____ months from the mailing date of the final rejection.
 b) The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
 Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) They raise the issue of new matter (see NOTE below);
 (c) They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. Applicant's reply has overcome the following rejection(s): _____.

6. Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. For purposes of appeal, the proposed amendment(s): a) will not be entered, or b) will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: 11-20

Claim(s) withdrawn from consideration: _____

AFFIDAVIT OR OTHER EVIDENCE

8. The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fail to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet

12. Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____

13. Other: PTO-892 Attached.

/Stanley Silverman/

Supervisory Patent Examiner, Art Unit 1793

Continuation of 11. does NOT place the application in condition for allowance because: Applicants arguments filed 02/11/2008 have been fully considered and found to be not persuasive for the following reasons:

With regard to the argument that Castro specifically recites that "a substantial amount of the incident light should pass through the article, albeit diffused, to the base for reflection off of the tooth surface, ... Since the article is translucent rather than transparent "(Paragraph [0041]" (Res, Pg-10, Para-2) and recites the ceramic to be translucent (Pg-10, Para-1), the prior art disclosure on the PCA is not limited to dental implants/tooth and clearly teaches its use in the sodium vapor lamp envelopes (P-0031; Clm-12) where in the requirement for transparency along with strength of the envelope would be obvious. The prior art teaches further teaches PCA with a transmittance of 70% @ 650 NM (Abstract, Fig-7) whose crystal grains are no greater than 1.0 micron and a contrast ratio to be less than 0.4 (Abstract, P-0044) wherein lower contrast ratio indicate greater levels of transmissivity (P-0044) i.e. increasing light transmission or transparent. The PCA has at least 99% theoretical density (P-0033) that overlaps with claimed range of >99.95 % Th. The prior art further teaches milling high purity sub-micron/nanoparticles (<0.5 micron), deagglomerating with ultrasonic, (P 0053-55, 97) adding a sintering aid such as MgO either singly or in combination (P-0060), and sinter in a multistep process and HIP to achieve substantially theoretically dense compact (P-0054, 58) i.e. sintering and controlling grain size and properties. The prior art teaches attain all the desired parameters of PCA and its utility as an envelope of sodium vapor lamp, and it would have been obvious to a person of ordinary skilled in the art to optimize the parameters of PCA as a function of its utility, and "[I]n considering the disclosure of a reference, it is proper to take into account not only specific teachings of the reference but also the inferences which one skilled in the art would reasonably be expected to draw therefrom." In re Preda, 401 F.2d 825, 826, 159 USPQ 342, 344 (CCPA 1968).

With regard to the argument that, both Yamamoto and Yamamoto-EP983 specifically recite in the title a "translucent polycrystalline ceramic," (Emphasis added), the translucent includes transparent (see Webster dictionary), and material with RIT of 30% (close analogy of in-line transmission) need not be fully transparent and can obviously possess some degree of diffusion or refraction in the transmitted light.

With regard to the argument that, Yamamoto-EP983 would have disclosed a microstructure with an RIT of at least 30%, if the ceramic of Yamamoto-EP983 did indeed have such properties, particularly since Yamamoto-EP983 strives "to provide a translucent polycrystalline ceramic having a good strength and hardness, capable of transmitting light through the ceramic" (Yamamoto-EP983, page 2, paragraph [0007] ; emphasis added). Yamamoto teaches attain all the desired parameters of PCA and its utility in a lamp, and it would have been obvious to a person of ordinary skilled in the art to optimize the parameters of PCA as a function of its utility. With regard to the argument that the prior arts do not disclose any examples meeting applicants composition with specific characteristics. A reference may be relied upon for all that it would have reasonably suggested to one having ordinary skill the art, including nonpreferred embodiments. Merck & Co. v. Biocraft Laboratories, 874 F.2d 804, 10 USPQ2d 1843 (Fed. Cir.), cert. denied, 493 U.S. 975 (1989). See also Celeritas Technologies Ltd. v. Rockwell International Corp., 150 F.3d 1354, 1361, 47 USPQ2d 1516, 1522-23 (Fed. Cir. 1998).

Applicants argument that the ceramics disclosed in Castro, Yamamoto and Yamamoto-EP983 are not similar enough to the polycrystalline alumina component as recited in independent claims 11, 14 and 16 is noted, but fails to overcome the obviousness rejection made in the last office action mailed 12/14/2007.

For the reasons set forth above and in the last office action applicants fail to patentably distinguish their composition, product and method over the prior art.

/KMW/
Feb 20, 2008.